

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

Nancy Leppink, in her official capacity as
Commissioner of the Minnesota Department of
Labor and Industry, Jan Malcolm, in her
official capacity as Commissioner of the
Minnesota Department of Health,

Court File No. _____

Plaintiffs,

**MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

vs.

EXPEDITED REVIEW REQUESTED

Water Gremlin Company,

Defendant.

INTRODUCTION

Defendant Water Gremlin Company is a manufacturer of lead sinkers and lead battery terminals. In January, and again in August, the State ordered to Water Gremlin to suspend certain operations because it was emitting volatile organic compounds in violation of its permits and State law. Separately, the Department of Health ("MDH"), the Department of Labor and Industry ("DLI"), and St. Paul - Ramsey Public Health ("Ramsey County") have discovered that Water Gremlin is failing to adequately control its employees' exposure to lead. The result is that employees of Water Gremlin are tracking lead on their bodies and clothes into their cars and homes, where it is harming their children, and creating a risk of permanent injury.

Since 2017, MDH and Ramsey County have identified twelve children of Water Gremlin employees with potentially unsafe blood lead levels. Two of those children had blood lead levels at concentrations above fifteen micrograms per deciliter of blood – a level at which the risks to child development are substantial. Despite repeated efforts from Ramsey County to get Water

Gremlin to cure these issues, they remain. The second child with blood lead levels above fifteen was discovered on October 17. Water Gremlin's general reaction to the detection of elevated blood lead level in its employees and their children has been to blame the employees for not following adequate industrial hygiene procedures. This is unacceptable. Simply put, it is Water Gremlin's moral and *legal* responsibility to ensure that lead is not migrating off site and endangering the health of its employees' children. Water Gremlin has abdicated this responsibility.

On October 28, DLI issued a shutdown order on Water Gremlin requiring it to cease operations until it can demonstrate that it has effective practices in place to prevent lead from migrating off site with its employees. By statute, the order can remain in place for 72 hours without further action from a district court. DLI Commissioner Nancy Leppink brings this motion to obtain a preliminary injunction extending the order. MDH Commissioner Jan Malcolm joins in this motion, pursuant to her own authority to abate threats to public health.

FACTS

Lead Health Risks to Children: Lead is a potent occupational toxin with well-known toxicological manifestations. (Declaration of Dr. Abby Montague, M.D. ¶ 1.) There is no level of lead exposure that is necessary or beneficial to the body, and no "safe" level of exposure. (*Id.*)

Lead is absorbed by the body through breathing and swallowing lead dust. (*Id.* ¶ 4.) Lead is particularly dangerous to children because their growing bodies absorb more lead than adults (whether it is inhaled or swallowed), and because children's brains and nervous systems are more sensitive to the damaging effects of lead. (*Id.*) Babies and young children can also be more highly exposed to lead because they often put their hands and other objects that can have

lead from dust or soil on them into their mouths. (*Id.*) Children absorb lead more readily through the digestive tract than adults. (*Id.*)

While there is no safe blood level of lead, a blood lead level of 5 micrograms per deciliter (mcg/dL) is used to indicate a possibly unsafe level for children and represents a level much higher than the levels of most children. (*Id.* ¶ 5.) Strong and consistent evidence shows that that even very low level lead exposures adversely affect the neurobehavioral development of children. (*Id.* ¶ 6.) Extensive data also shows a direct link between low-level lead exposure during early development, and deficits in neurobehavioral-cognitive performance evident late in childhood through adolescence. (*Id.*) Even low blood lead levels can cause learning disabilities and problems with cognition and attention. (*Id.*) Children may have decreased intelligence and have difficulties with inattention and hyperactivity even at low lead exposure. (*Id.*)

Children with higher blood lead levels may be affected with delayed growth, renal injury, short-term memory loss, and hearing loss. (*Id.* ¶ 7.) At high blood lead levels, lead can cause permanent brain damage and even death. (*Id.*) Even exposure at levels below what can be treated can have long-term impacts on childhood development. (*Id.*)

Lead exposure can be difficult to detect because symptoms are subtle, develop slowly, and are similar to other common childhood conditions. (*Id.* ¶ 8.) Symptoms of lead exposure in children include developmental delays, learning difficulties, irritability, constipation, loss of appetite, abdominal pain, high blood pressure, fatigue, anemia, renal impairment, and hearing loss. (*Id.*)

A blood lead level of 15 mcg/dL in a child is significant. (*Id.* ¶ 9.) Removing a child with that elevated lead level from the source of the lead is critical to prevent adverse health and cognitive effects. (*Id.*) If a child continues to be exposed, lead can accumulate to higher levels in the body and the child is subject to unpredictable, ongoing developmental injury. (*Id.*)

Because the half-life of lead in blood is approximately 35 days, a single blood lead measure during childhood might not accurately reflect the magnitude of exposure at an earlier age point, and this early exposure might have the strongest effects on brain development and function. (*Id.* ¶ 10.)

Pregnant women and unborn children are also at high risk from lead exposure. (*Id.* ¶ 11.) Pregnancy is a period of high susceptibility to the effects of lead for both the mother and the unborn child. (*Id.*) Studies have confirmed the transfer of lead from the mother to the fetus. (*Id.*) Exposure to lead during pregnancy can cause miscarriage, premature birth, and birth defects. (*Id.*)

Primary prevention of lead exposure is critical to allow children to live to their potential. (*Id.* ¶ 12.) The only available treatment for elevated blood lead levels is chelation therapy. (*Id.*) In this treatment, a medication given by mouth binds with the lead so that it is excreted in urine. (*Id.*) This treatment helps remove lead from the body. (*Id.*) However, this treatment only makes minor improvements and only in those with blood lead levels over 45 mcg/dL. (*Id.*) Chelation will not reverse already-existing damage. (*Id.*) Most adverse effects of lead poisoning are permanent and irreversible. (*Id.*)

Minnesota's Lead Surveillance System: Because of the toxicity of lead, the State has a lead surveillance system administered by MDH. (Declaration of Stephanie Yendell, D.V.M. ¶ 2.) The surveillance system is an integrated regulatory program that involves both State and local health regulators. (*Id.*) Its purpose is to: (1) monitor blood lead levels in children and adults to identify trends and populations at high risk for elevated blood lead levels; (2) ensure that screening services are provided to populations at high risk for elevated blood lead levels; (3) ensure that medical and environmental follow-up services for children with elevated blood lead levels are provided; and (4) provide accurate and complete data for planning and implementing

primary prevention programs that focus on the populations at high risk for elevated blood lead levels. (*Id.*)

By statute, all blood lead test results conducted on any person living in Minnesota must be reported by the testing laboratory to MDH. (*Id.* ¶ 3.) There are a variety of people who are commonly tested for blood lead levels, including: (1) employees in certain industries where testing is required; (2) young children screened as part of routine well-child medical visits at ages 1 and 2; (3) newly arrived refugees; (4) pregnant women with certain risk factors; and (5) people who are experiencing symptoms associated with lead exposure. (*Id.*)

There are various thresholds for lead elevations that trigger action depending on the blood lead level, the age of the person tested, whether the tested person is pregnant, and whether the person works in an industry that handles lead. (*Id.* ¶ 5.) One of MDH's roles is to receive reports of elevated blood levels, and to transfer those reports to the appropriate health agencies for further action. (*Id.*) One task that State and local health agencies perform is to assess possible sources of lead contamination upon receipt of a triggering blood lead test. (*Id.* ¶6.) Because residential sources are the most common, the assessment usually starts with the residence of the subject person, but can also involve other sites that may be contributing to the lead contamination. (*Id.*) The general goal is to trace the lead contamination to its source or sources so that it can be eliminated. (*Id.*)

There are various thresholds for lead elevations that trigger action under the surveillance program. (*Id.* ¶ 8.) For children under the age of 6, there is an action trigger at 5 mcg/dL. (*Id.* ¶ 9.) At this level, MDH must report the test result to the relevant local public health agency. (*Id.*) The local public health agency would then typically make contact with the child's parent to offer education and reminders for follow-up testing. (*Id.*) Depending on local resources, the local public health agency may offer an in-home educational visit. (*Id.*) The lead case manager

interviews the parents to determine likely sources of lead exposure for the child. (*Id.*) Jurisdictions with their own assessing agency may offer an environmental assessment of the home for sources of lead contamination. (*Id.*)

For children under the age of 6 and a confirmed blood level of 15 mcg/dL, an in-home environmental assessment becomes a mandatory obligation of the assessing agency. (*Id.* ¶ 10.) If the assessing agency identifies sources of potential contamination during the assessment, such as peeling paint, the assessing agency is required to issue a corrective action order. (*Id.*) Assessing agencies also have the authority to conduct assessments and issue corrective orders when they receive confirmed blood lead level test results for children under 6 at levels between 5 and 15 mcg/dL, but the statute does not require such assessments. (*Id.*) There is also an action trigger for pregnant women with confirmed blood lead levels of at least 10 mcg/dL that triggers a mandatory assessment obligation. (*Id.* ¶ 11.)

There is a separate allowance for MDH to report exceedances of 25 mcg/dL from adults whose most likely source of lead exposure is occupational to the Minnesota Occupation Safety and Health Administration (“MnOSHA”), which is a division of DLI. (*Id.* ¶ 13.) The purpose of these reports is assist DLI in identifying potential occupational sources of lead exposure. (*Id.*)

Water Gremlin Lead Exposure: Water Gremlin employees involved in lead manufacturing operations that expose them to lead concentrations above certain levels are required to have their blood tested for lead on a periodic basis. (*Id.* ¶ 15.) Because all results from these tests must be reported to MDH, MDH has regular testing data for Water Gremlin employees. (*Id.*) The reporting systems do not require the reporting laboratory to report the identity of the employer. (*Id.*) However, some laboratories will do so, and even in the absence of such information, MDH is often able to pair occupational tests with specific employers because either because the tests are performed in batches, or for other reasons. (*Id.*)

Lead testing data shows that the majority of tested Water Gremlin employees have elevated blood lead levels, and that a significant percentage of Water Gremlin employees have blood lead levels above 25 mcg/dL, the level triggering reports to MnOSHA (*id* ¶ 16):

Year	Median Result (mcg/dL)	Percent of Known Employees with a BLL ≥5 mcg/dL	Percent of Known Employees with a BLL ≥25 mcg/dL	Range of BLL (mcg/dL)	# of Known Employees Tested
2015	9.6	86.6%	1.9%	1.0–41.8	216
2016	8.7	79.8%	1.3%	0.9–40.3	237
2017	8.8	82.9%	4.2%	0.9–37.3	240
2018	8.8	76.4%	6.7%	0.9–45.6	178
2019	9.0	81.3%	4.5%	1.0–39.0	249

Water Gremlin is a high source of occupational-related elevated lead blood levels. (*Id.* ¶ 17.) In 2017 for example, Water Gremlin employees represented 21% of all Minnesota adults who had known occupational-related blood lead test results of at least 5 mcg/dL. (*Id.*)

The children of Water Gremlin employees have been a frequent source of elevated blood level reports. (*Id.* ¶ 18.) To date, there has been no comprehensive assessment of the children of Water Gremlin employees. (*Id.*)¹ MDH and Ramsey County have nonetheless been able to identify twelve children of Water Gremlin employees with elevated blood lead levels above 5 mcg/dL among the children referred to Ramsey County by MDH’s blood lead surveillance program. (*Id.*)

Prior Regulatory Action: In the late-2017 to mid-2018 timeframe, MDH notified Ramsey County of approximately 6-8 instances of elevated blood lead level cases of children whose parents were subsequently determined to have worked at Water Gremlin. (Declaration of James Yannarely ¶¶ 6-9.)

¹ While it is common for children to be screened for lead at ages 1 and 2, there is no mandatory statewide program for testing children. As a result, MDH would only receive a lead test result on a Water Gremlin employee’s child if that child is actually tested.

Ramsey County performed risk assessments of the worker's homes, which indicated minimal sources of lead beyond the worksite. (*Id.* ¶ 10.) The homes in question were newer housing stock with no notable sources of lead from common residential sources such as peeling lead paint. (*Id.*) Ramsey County then performed swipes on various areas of the home that showed lead contamination was likely being tracked into homes and cars by the parents. (*Id.*) Ramsey County found significant lead deposits on car seats, and on car floor and entry floors. (*Id.*) Some of the lead levels Ramsey County found were extremely high. (*Id.* ¶ 11.) For example, a swab of the driver-side floor mat of a parent who worked at Water Gremlin who took smoke breaks in their car tested positive for lead dust at a level of 9,400 mcg/sqft. (*Id.*) For comparison, the standards for lead dust in the home requiring action are 40 mcg/sqft on the floor and 250 mcg/sqft for window sills. (*Id.*)

During this period, while there was evidence of lead migrating with Water Gremlin employees to their homes, none of the blood lead levels of the children affected had reached the 15 mcg/dL threshold for mandatory actions. (*Id.* ¶ 12.) Ramsey County nonetheless worked closely with affected families to improve their lead hygiene efforts and continue testing. (*Id.* ¶ 13.) Ramsey County and other agencies, including MDH and DLI, also formed a consortium to contact Water Gremlin, elevate concerns over employee take-home lead exposure, and coordinate a response to Water Gremlin. (*Id.* ¶ 15.)

In mid-September 2018, Ramsey County met on-site with Water Gremlin and relayed the concerns with the elevated blood levels in children of employees. (*Id.* ¶ 16.) Water Gremlin agreed to provide better education to their employees in the language that each employee speaks. (*Id.*) Ramsey County and Water Gremlin also worked to identify the portions of the plant most likely responsible for take-home lead exposures. (*Id.*) By cross-referencing information provided

by Water Gremlin, Ramsey County was able to identify the die-casting area of the plant as a major source for the take-home lead. (*Id.*)

Ramsey County went to the Water Gremlin plant on September 18, 2018 to take random dust collection and visual assessments of the Water Gremlin Plant. (*Id.* ¶ 17.) The purpose was to provide Water Gremlin with information that it could use to better develop a plan for improving the safety of its workers and their children. (*Id.*) In addition to taking samples, Ramsey County observed the following practices that are not lead-safe:

- Employees smoking in cars on break in their work clothes;
- Employees eating in the lunchroom in work clothes with visual lead dust on them;
- Employees not washing their hands in the breakroom prior to eating;
- Employees walking through contaminated areas of the plant wearing street shoes in the process of both arriving for, and departing from, their shifts;
- Employees wearing coveralls unzipped to waist exposing t-shirt that they may wear home to lead contamination;
- Employees in general meetings with lead contaminated coveralls sitting in conference room chairs. (*Id.*)

In October 2018, Ramsey County met again with Water Gremlin to review the results of wipe testing. (*Id.* ¶ 18.) Ramsey County presented several strong recommendations that included contracting with an industrial hygienist to evaluate plant procedures and implement changes, provide lead education to employees in their preferred language, taking advantage of Ramsey County's lead education resources, testing all employees for lead, investigating better cleaning products and procedures that would help reduce lead dust, and continuing to self-test to determine if these suggested changes were making a difference. (*Id.* ¶ 19.)

In January 2019, MDH received and relayed to Ramsey County a report of a child with a blood lead level of 16.6 mcg/dL. (*Id.* ¶ 22.) This triggered a mandatory investigation. (*Id.*) It was then determined that the affected child had a parent who worked at Water Gremlin. (*Id.* ¶ 23.) Ramsey County tested a family vehicle for the presence of take-home lead. (*Id.*) The family's car driver seat produced a result of 700 mcg/sqft, the driver's side floor tested at 7000 mcg/sqft, and carpeted area near entry way of the home tested at 50 mcg/sqft. (*Id.*) These levels far exceed applicable residential standards for lead swipe test results. (*Id.*) The child's home did not otherwise have any source for lead contamination. (*Id.*)

The January test result led Ramsey County to escalate its prior efforts. (*Id.* ¶ 24.) Ramsey County held a meeting with Water Gremlin and required Water Gremlin to take several actions, including: immediately complete the various suggestions made over the preceding months; retaining an industrial hygiene professional to evaluate the plant; requiring Water Gremlin to provide paperwork confirming its retention of the consultant; and providing a copy of the consultant's evaluation and recommendations. (*Id.*) Ramsey County also required Water Gremlin to provide a timeline and plan for implementation of any and all recommendations of the outside industrial hygienist. (*Id.*)

In March 2019, Water Gremlin provided Ramsey County with a copy of its contract with a professional firm and the qualifications of the firm. (*Id.* ¶ 25.) Ramsey County continued meeting with Water Gremlin and its retained consultant to discuss take-home lead concerns. (*Id.*) The consultant spent at least two days on-site at Water Gremlin reviewing its practices and procedures in light of Ramsey County's concerns. (*Id.*) Water Gremlin sent all of the consultant's results, recommendations, and its implementation timeline to Ramsey County. (*Id.* ¶ 26.)

Evidence shows that Water Gremlin has not succeeded in fixing its lead problem:

On October 14, 2019, Ramsey County received a report of a child with a blood lead level of 15 mcg/dL. (*Id.* ¶ 29.) The child again had a parent who worked at Water Gremlin. (*Id.*) The family lives in a newer apartment, and there were no identifiable sources of lead paint within the apartment other than the parent's employment at Water Gremlin. (*Id.*) The apartment's front entry floor tested slightly high for lead dust (60 mcg/sqft). (*Id.*) However, the driver's side seat and driver's side floor tested extremely high at 130 mcg and 6,700 mcg, respectively. (*Id.*) Ramsey County referred this new case back to MDH on October 17, 2019. (*Id.*) MDH believes that, if tested, more children of Water Gremlin employees are likely to show elevated blood lead levels. (Yendell Aff. ¶ 19.)

MDH has compared the blood lead testing results associated with Water Gremlin and two similar companies that have lead manufacturing operations. (*Id.* ¶ 20.) The test results for the employees of the three companies are broadly similar, but unlike with Water Gremlin, the comparable companies have not had comparable reports of lead exposures in the children of its employees in recent years. (*Id.*) In MDH's view, this suggests that Water Gremlin's problems are both unique to Water Gremlin and avoidable. (*Id.*)

Department of Labor Investigation: In early October, DLI received a separate referral from the Minnesota Pollution Control Agency concerning lead handling practices at Water Gremlin. MPCA had been on site to evaluate non-occupational health aspects of Water Gremlin's lead handling practices. Because the occupational safety aspect is regulated by DLI, MPCA made the referral.

DLI assigned an investigator to the matter on October 15, 2019. (Declaration of Doug Poeschl ¶ 3.) He was on-site at Water Gremlin on October 15, 2019, October 22, 2019, and October 26, 2019. (*Id.*) Two additional MNOSHA investigators accompanied the initial

investigator on-site on October 26, 2019. (*Id.*) As part of the investigation, DLI investigators reviewed Water Gremlin's policies and procedures related to lead, observed employee work practices and adherence to policies, and interviewed employees. (*Id.* ¶ 4.)

DLI's investigators focused on employees manufacturing battery terminal posts. (*Id.* ¶ 5.) The battery terminal posts are cast from molten lead in die-casting machines. (*Id.*) The Water Gremlin plant has approximately 30 lead die-casting machines in operation. (*Id.*) The investigators also reviewed a copy of Water Gremlin's personal protective equipment (PPE) hazard assessment. (*Id.* ¶ 6.) The hazard assessment stated that protective clothing and footwear are necessary to limit employees' exposure to lead. (*Id.*) The hazard assessment stated that employees are required to wear protective clothing and footwear during their work shift. (*Id.*)

DLI investigators observed employees engage in numerous unsafe acts that could result in serious physical harm, including (*id.* ¶ 7.):

- a. Employees using the same locker for clean and dirty outerwear, creating a substantial risk of cross contamination.
- b. Employees wearing their personal socks in parts of the change room where employees had worn dirty protective clothing and footwear.
- c. Employees placing dirty protective clothing into storage bins and then later re-handled the clothing to package it for laundry service – creating an additional unnecessary exposure to lead.
- d. Visible lead splatter adhering to protective clothing even after the protective clothing had been laundered.
- e. Employees wearing protective clothing in improper manners. For example by wearing personal t-shirts beneath protective clothing that was not fully buttoned.
- f. Employees washing their hands, but not wash their faces, before entering a clean area.
- g. Brooms used for dry sweeping being left throughout the plant. Dry sweeping is inappropriate in lead work areas because it will generate airborne lead dust.
- h. Employees carrying personal cellphones in the production area despite signs stating that cellphones are prohibited in that area. The cellphones may be

contaminated with lead while they are in the production area, and then employees may carry lead on their cellphones into their homes.

Many of these issues had previously been identified by Ramsey County, and Water Gremlin had committed to correcting them. (*See* above at 8-9.) DLI investigators also interviewed Water Gremlin employees who stated that they had worn dirty protective clothing from work to their homes in the past. (*Id.* ¶ 8.) The plant manager confirmed this, saying “but what can you do?” (*Id.*)

DLI investigators observed that Water Gremlin does not provide HEPA vacuuming or tacky mats at the entrances of lunchrooms or change rooms. (*Id.* ¶ 9.) Therefore, employees were more likely to spread lead to clean areas. (*Id.*)

Based on their observations and interviews on-site, the DLI investigators do not believe that Water Gremlin’s safety and health training is effective. (*Id.* ¶ 11.) Employees stated that Water Gremlin primarily uses pictures to provide some safety and health training to employees who do not speak English. (*Id.*) One employee who only works on the weekends stated that he misses many safety trainings. (*Id.*)

DLI investigators did not observe Water Gremlin management take any action to correct any of the unsafe practices regarding employees’ use of PPE. (*Id.* ¶ 12.) Based on what they observed on-site at Water Gremlin and through employee interviews, they concluded that Water Gremlin had violated numerous Federal and State workplace safety rules and standards, and that Water Gremlin’s lead handling and employee protection practices present a serious risk of physical harm to the employees and their children through lead poisoning. (*Id.* ¶¶ 13-14.) After consultation with Commissioner Leppink, the investigators issued Water Gremlin a 72-hour shutdown order commencing on October 28, 2019 that expires Thursday, October 31, at 11:30 a.m. (Complaint Ex. 1.)

ARGUMENT

The Commissioners seek an order enjoining Water Gremlin from engaging in any industrial operations unless and until it can demonstrate that it has verifiable processes in place that will prevent lead from be transmitted off site by its employees.

I. A PRELIMINARY INJUNCTION IS NECESSARY TO PREVENT AN IMMINENT AND ONGOING POISONING OF CHILDREN WITH TOXIC LEAD FROM WATER GREMLIN’S OPERATIONS.

Minnesota courts have broad discretion to grant a preliminary injunction. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993); *Metro. Sports Facilities Comm’n v. Minn. Twins P’ship*, 638 N.W.2d 214, 220 (Minn. Ct. App. 2002). Here, Water Gremlin’s lax oversight of its employees, and failure to address known risks of lead migrating with its employees to their children, calls out for an injunction until Water Gremlin can satisfy the Court that it will follow practices to prevent lead contamination of its employees and protect their children from risk of permanent harm.

A. The Court May Issue an Injunction Without Reference to the Dahlberg Weighing Factors.

Injunctions are generally considered to be an equitable remedy, but they also may be provided by statute. The latter is at issue here. Where a statute provides for injunctive relief as a remedy, a court is not required to apply the normal *Dahlberg* multi-factor analysis in determining whether to issue an injunction. *State v. Minnesota Sch. of Bus., Inc.*, 899 N.W.2d 467, 471–72 (Minn. 2017). Instead, court’s task is simply to determine whether the conditions set forth in the statute for issuing an injunction are met. *Id.*

DLI’s statutory authority is clear in its application to the present facts. Section 182.662 allows a Court to issue an injunction upon a showing that there is a “condition or practice” at an

employment site that “could reasonably be expected”² to cause “serious physical harm” before the danger can be eliminated through other enforcement mechanisms. As a result, the only question before this Court is whether Water Gremlin’s lax oversight of employee lead contamination is a practice that can “reasonably be expected” to cause serious physical harm the employees’ children. The answer to this question is clearly “yes.” The children of Water Gremlin employees are already showing evidence of significant lead contamination, and Water Gremlin’s remediation efforts to date have failed. Given the known, permanent, and debilitating impacts of lead toxicity in young children there can be no dispute that Water Gremlin’s practices can “reasonably be expected” be present a risk of “serious physical harm” to those children that requires an immediate remedy.

The Commissioner of Health’s statutory authority has a similarly clear application to the facts of this case. Section 145.075 allows this Court to enjoin “any activity or failure to act that adversely affects the public health.” Minn. Stat. § 145.075. Here, despite its knowledge of the problem and repeated warnings, Water Gremlin has failed to take the steps necessary to prevent its employees from carrying lead particulates off site on their bodies and clothes, endangering the safety of these employees’ children. It is particularly troubling that many of these practices directly mirror the very issues that Ramsey County identified in late 2018 and early 2019, and that Water Gremlin had committed to address. Moreover, to the extent Water Gremlin employees sell their cars, or vacate homes or apartments contaminated with take home lead, the

² Notably the standard for the Court to issue an injunction is lower than for the agency to issue a 72-hour administrative order. Whereas a 72-hour order requires a finding by an inspector and the Commissioner that there is a “substantial probability” that the practice in question will produce harm, the standard for a court to issue an injunction is only that the practice “could reasonably be expected” to produce harm. Minn. Stat. § 182.662, subds. 1, 2. This distinction makes sense. 72-hour orders are issued without associated court review, while court injunctions are issued only upon court review.

subsequent purchasers/or residents may face a lead contamination risk completely unknown to them. This is, by its very nature, a threat to public health, and this Court has the authority to enjoin it.

B. Even if the Court Were to Apply the *Dahlberg* Factors, the Commissioners Have Met the Burden for a Preliminary Injunction to Issue.

While the only consideration for the statutory injunction to issue is whether the relevant statutory criteria are met, the equitable considerations of *Dahlberg* also support its issuance. Under *Dahlberg*, courts consider five factors: (1) the likelihood of success on the merits; (2) the nature and relationship of the parties; (3) the balance of relative harm between the parties; (4) public policy considerations; and (5) any administrative burden involving judicial supervision and enforcement. *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965). Each of these factors supports issuance of the temporary injunction.

Likelihood of success on the merits: Of the five *Dahlberg* factors, the most important is the likelihood of success on the merits. *Softchoice v. Schmidt*, 763 N.W.2d 660, 666 (Minn. Ct. App. 2009). The Commissioners are likely to succeed on the merits of their action. The dangers of lead are well known, there is substantial evidence that the children of Water Gremlin's employees are being exposed to lead in unsafe levels that their parents are tracking home. It is equally clear that Water Gremlin's continued failure to manage the risk is contributing to the lead exposure, and the Commissioners have clear authority under the applicable statutes to prevent this threat to public health.

Nature and relationship of the parties: Ramsey County has tried to address lead contamination problems with Water Gremlin through both requests for voluntary compliance and corrective orders. Those efforts have been unsuccessful at preventing the lead contamination from spreading to vulnerable children of Water Gremlin employees, as evidenced by the most

recent case of a child exceeding 15 mcg/dL blood lead level on October 17, 2019. This lawsuit, and the attendant temporary injunction, are the necessary next steps to identify and implement a sufficient remedy.

Balance of harms: The harm to children exposed to lead is well established and substantial. There is no harm that Water Gremlin might suffer through an injunction that would outweigh the interests of the public, the employee-parents, and the children themselves in preventing lead exposure. Moreover, Water Gremlin was given notice and the opportunity to correct its practices, and its actions have proven ineffective. Water Gremlin can also move to lift any injunction in this case, upon a showing to the Court that it has verifiable processes in place to eliminate the public health risk posed by its current practices.

Public policy: Public policy clearly supports preventing lead exposure in children. While this principle needs little discussion, its importance is amply demonstrated by, among other things, Minnesota's Lead Poisoning Prevention Act – an extensive regulatory scheme designed to locate and eliminate sources of lead contamination. Minn. Stat. §§ 144.9501-9512.

Administrative burden: Finally, there is no unwarranted administrative burden involved in judicial supervision and enforcement of the Commissioners' proposed preliminary injunction. This motion simply asks the Court to have Water Gremlin suspend the conduct that is causing children to be exposed to lead contamination until it can be prevented. That is exactly the issue that will be addressed during the merits phase of this matter.

CONCLUSION

For the foregoing reasons, the Commissioners respectfully request that the Court grant its motion for a preliminary injunction: (1) enjoining Defendant from engaging in any lead manufacturing or handling operations until it submits to the Court a verifiable plan with third-party monitoring to ensure that employees are not tracking lead contamination on their bodies or clothes to their cars and homes; and, if still necessary, (2) requiring Water Gremlin within 24 hours to provide contact information to the Commissioners for any individual it has employed at its White Bear Lake facility since October 28, 2017, so that the Commissioner, any other public health agency, and other State agencies can contact those employees to provide lead screening and abatement assistance, and employee dislocation services.

Dated: October 28, 2019

Respectfully submitted,

KEITH ELLISON
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/s/ Peter N. Surdo

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ATTORNEYS FOR THE COMMISSIONERS

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211.

Dated: October 28, 2019

/s/ Peter N. Surdo

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